

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Petition of Locus Telecommunications, Inc.
for a Declaratory Ruling or
Rulemaking Regarding Customer
Service Calls from Payphones, and a Motion
To Dismiss Filed by APCC

RM-11354

REPLY COMMENTS
OF LOCUS TELECOMMUNICATIONS, INC.

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INTRODUCTION

In an apparent attempt to distract the Commission from the fact it has no valid opposition to the Petition, APCC presents -- as its primary argument -- the claim that Locus' Petition should be dismissed for its failure to "seek to address any bona fide controversy or genuine uncertainty as to the interpretation of the Commission's compensation rules." See APCC's Motion to Dismiss at pp. 1-2 ("Motion to Dismiss"). APCC's Motion to Dismiss improperly attempts to distract the Commission from the merits of Locus' Petition by presenting inaccurate and procedurally flawed arguments.¹ The Commission should dismiss APCC's Motion to Dismiss and, for the reasons set forth below, rule that payphone-originated calls placed to toll-free telephone numbers assigned by a prepaid calling card provider for customer service purposes are non-compensable.²

THERE EXISTS A CLEAR CONTROVERSY AND UNCERTAINTY AS TO THE INTERPRETATION OF THE COMMISSION'S COMPENSATION RULES

Payphone-originated, toll-free calls to a prepaid calling card provider's Customer Service department present a unique situation that was not contemplated by the Commission when it promulgated the most recent payphone compensation regime ("the Tollgate Rules"). Section 276 provides that "a compensation plan should 'fairly compensate' a PSP for 'each and every completed intrastate and interstate call.'"³ While the parties agree that Section 276 governs the payphone compensation regime, they disagree as to what "fairly compensates" a PSP, what constitutes a "completed call," and which entity is responsible for the PSP compensation under the circumstances described in Locus' Petition. Therefore, it is patently obvious that Locus' Petition presents several

¹ On March 5, 2007, Locus filed a Letter in response to APCC's Motion to Dismiss. In its Letter, Locus explains why APCC's filing is without merit and an improper abuse of the Commission's processes. Locus will not belabor the procedural and legal deficiencies of APCC's filing and instead incorporates its March 5, 2007 Letter in its Reply Comments.

² In the alternative, Locus requests the Commission initiate a Rulemaking Proceeding and adopt specific rules to govern compensation of certain Customer Service calls, including a default compensation rate that is significantly lower than the current \$0.494 rate.

³ See 47 U.S.C. § 276(b)(1)(A) (emphasis added).

significant issues for determination by the Commission. For APCC to argue there is no “controversy” or Commission rule to be interpreted is absurd.

1. **There is a ripe controversy as to which party, if any, is liable for compensating PSPs for calls to a prepaid carrier’s customer service toll-free number.**

According to APCC, there is no controversy because “under the compensation rules, customer service calls are subject to compensation and [t]he compensation is to be paid by the carrier (here MCI) that completed the calls to the called party (here Locus).” *Id.* at 2. Although on the surface MCI (n/k/a Verizon) appears to support APCC’s Motion to Dismiss, its Comments actually support a ruling in favor of Locus on the specific issues addressed in its Petition. The Commission cannot ignore that APCC’s interpretation of the Commission’s rules is disputed by all three parties directly affected by the issue, Locus, MCI (n/k/a Verizon) and APCC.⁴ Indeed, there is a “controversy” regarding the interpretation and application of the Commission’s *Tollgate Rules*. This controversy is ripe and appropriate for resolution pursuant to the Commission’s authority to issue declaratory rulings.

APCC repeatedly argues that Verizon is the “Completing Carrier” responsible for compensation. *Id.* at 2, 5 and 9. Verizon, on the other hand, disclaims being the “Completing Carrier” and instead declares itself an “Intermediate Carrier.” Verizon Comments at 3. Verizon further claims it is Locus that is the Completing Carrier with compensation responsibility under the Commission’s rules. *Id.* Locus agrees with Verizon that it is the carrier that actually “completes” calls placed to its Customer Service numbers, but does not agree is it is responsible for the compensation. Locus Petition at 9-11.

In particular, Verizon states;

[w]hen Verizon delivers a call to Locus’ platform, it is Locus that is the completing carrier for that call, whether Locus routes that call to another end-user or to its own IVR

⁴ Compare Locus Petition, APCC Motion to Dismiss and Verizon Comments.

system or customer service representative. Verizon has no way of knowing where those calls are routed, much less whether those calls are completed. Only Locus, the completing carrier, has that information. Verizon, as the intermediate carrier for that call, knows only that it passed the call to Locus's (sic) platform. *Id.*

Thus, even if it was determined customer service calls were compensable, there exists a controversy as to which party is responsible for the PSP compensation.

As indicated above, Locus agrees with Verizon's position that Locus is the completing carrier and Locus is the company with the best information to determine whether a call is completed. However, these characterizations do not, in and of themselves, place the duty of compensation for the toll-free customer service calls on Locus, or for that matter, any one at all.

In its *Tollgate Order*, the Commission concluded that the best way to ensure "fair compensation" for every "completed call" is to require "the entity that: (1) is the primary economic beneficiary of the PSP services and (2) has control over the most accurate call completion data to compensate the PSPs." *Tollgate Order* at ¶ 26 (emphasis added). Neither Verizon nor Locus are *both* the Primary Economic Beneficiary ("PEB") and best suited to identify a completed call. Therefore, under the plain reading of the *Tollgate Rules*, neither company is liable for payphone compensation. APCC tries to steer around this unavoidable outcome by positing the disingenuous argument that the two-prong test is merely a "rationale" and not the rule itself. Nothing could be further from the truth. Indeed, in the very same paragraph of the *Tollgate Order*, the Commission made it abundantly clear that the "compensation plan" embodied in its rules was premised on identification of the liable entity. *Id.* ("We also find that we can better ensure "fair compensation" by enacting a compensation plan that specifically addresses the PSPs' need to identify the liable entity and that specifically requires the liable entity to pay based on the most accurate "completed call" data available")(emphasis added). Short of applying the two-part test, the Commission's rules provide absolutely no guidance as to who the "liable entity" is with respect to the calls described in Locus' Petition. The three parties most

directly affected by the issue presented in Locus' Petition have widely disparate opinions as to which entity is the "liable entity." APCC believes the liable entity is Verizon. *See* APCC Motion to Dismiss at Fn. 4 ("... calls reported by MCI are customer service calls, it follows that MCI is the Completing Carrier for those calls."); *see also, id.* at Fn. 7 ("Under the Commission's rules, it is up to the carrier that owes the compensation, which in this case apparently is MCI, whether to surcharge its toll-free service subscriber, which in this case is Locus."). Verizon believes the liable entity is Locus. *See* Verizon Comments at 3 ("When Verizon delivers a call to Locus's platform, it is Locus that is the completing carrier for that call."). Application of the Commission's "rule" to the facts, however, supports Locus' proposition that neither it nor Verizon is the liable entity. As such, no entity is responsible for compensating APCC for the types of calls described in Locus' Petition and the Petition should be granted.

2. There is a controversy as to what constitutes "fair".

APCC's Motion to Dismiss and its demand for compensation of 100% of payphone-originated, toll-free calls to Locus' Customer Service department flies directly in face of the fairness principles that are at the core of the Tollgate Rules. It is well established that under the Tollgate Rules, PSP compensation must be fair. The Commission has expressly interpreted "fair" to "mean a plan that is fair to all parties."⁵ Mandatory compensation for *all* payphone-originated, toll-free calls to a prepaid providers' Customer Service department is not only patently unfair to prepaid calling card providers and consumers of prepaid calling services, it also facilitates potential windfall revenue for Intermediate Carriers.⁶

⁵ *The Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Report and Order, CC Docket No. 96-128 (2003), at ¶ 25 (emphasis added).

⁶ Although a topic for another day, there are legitimate concerns that the entire Tollgate regime promotes PSPs' unreasonable discrimination in favor of large carriers, like Verizon, as compared to small carriers, like Locus; the facts give rise to a colorable violation of Section 202(a) of the Communications Act. 47 U.S.C. § 202(a).

APCC consistently plays the “woe is me” victim before the Commission. Indeed, over the years it has become apparent that APCC rarely passes up the opportunity to remind the Commission of how the prepaid industry has done them wrong throughout the history of Tollgate.⁷ APCC’s distorted and cynical view of the industry has it seeking penalties and payment for past wrongs wherever it can. *See* Comments of Gene Retske at p. 4 (“Retske Comments”). APCC’s industry-wide vengeance has unjustifiably led to Locus. If permitted, APCC’s practice of exacting payment on non-compensable calls will harm the prepaid and payphone industries as well as the public. *See generally*, Retske Comments (noting that “[t]he prepaid calling card and payphone industries are uniquely interdependent”) at 2.

Despite APCC’s attempt to garner sympathy and shift the Commission’s focus from the real issues, the Commission can not ignore the fact that any PSP compensation regime adopted must be fair to *all parties*. APCC claims it is a plain and simple proposition -- compensation is owed for all toll-free customer service calls Verizon transports to and hands off to Locus at its T-1 board. But such a view ignores technical facts and Congressional intent and results in a patently unfair outcome, as applied to Locus. What is fair is what Congress and the Commission have declared – that is, only “completed calls” are compensable, regardless of form or context. Locus and Verizon agree, only Locus knows whether any particular call is completed. Verizon Comments at 3 (“Verizon has no way of knowing where those calls are routed, much less whether those calls are completed. Only Locus, the completing carrier, has that information.”). If the Commission accepts APCC’s view, the result would be that Locus’ customer service calls must be held to a higher definitional standard than that which applies to all other payphone-originated, toll-free calls, but to all other prepaid carriers’ customer service calls, as well.

⁷ *See e.g.*, Comments of American Public Communications Council, *In the Matter of Regulation of Prepaid Calling Card Services*, WC Docket No. 05-68 at p. 2.

Locus' Petition makes clear that the unique nature of customer service calls warrant a finding that they are non-compensable. However, if for whatever reason the Commission determines they are compensable, at a minimum, Locus requests clarification that *only* those calls that are actually *answered* by a Customer Service Representative ("CSR") are considered "completed" under the Tollgate rules. Furthermore, because it is in the public interest to provide toll-free Customer Service numbers and because state laws mandate the provisioning of such lines without cost to the prepaid customer, any PSP compensation for these calls should be at a reduced rate to reflect the underlying public policy and the expense incurred by the prepaid carrier to accurately track those calls that are, in fact, "completed," and not merely dropped off by Verizon at Locus' T-1 board.

3. There exists a controversy as to what is considered a "completed call."

According to APCC, there is no uncertainty as to whether toll-free customer service calls are subject to compensation. In its opinion, it is black and white, they are compensable and it is irrelevant whether or not they are actually "answered" by a customer service representative. So long as the call makes its way to Locus' internal Call Distribution System or any platform offering Interactive Voice Response service of any kind, in APCC's view, it is "complete" and compensable.⁸ This position should be viewed suspiciously given the position recently advanced by APCC in its Comments filed *In the Matter of Regulation of Prepaid Calling Card Services*, WC Docket No. 05-68 (Oct. 12, 2006) ("IDT Proceeding"). In the IDT Proceeding, APCC sought to expand the definition of

⁸ APCC mischaracterizes the routing of calls from Verizon to Locus' Call Distribution Platform and maintains incomprehensible and untenable positions regarding the point at which a call is considered "completed" and compensable. APCC previously stated that Verizon obtains answer supervision when toll-free inbound calls are delivered to Locus' T-1 board. APCC claimed that it was at this juncture that "compensability" is determined and that 100% of such calls were compensable because 100% of the calls to toll-free customer service numbers identified by Locus were included in Verizon's Intermediate Carrier reports. This view differs from the position espoused in this proceeding, wherein APCC states that compensability is determined when a call reaches an IVR. Calls terminated to a T-1 are not the same as calls routed to an IVR. APCC can not have it both ways.

“completed call” to include calls that reach the platform and receive certain “information” services.⁹ Now, seeing yet another opportunity, APCC seeks to expand the definition of a “completed call” even further, to include IVR systems such as Locus’ Call Distribution System. If the definition of completed calls was as broad as APCC claims it so obviously is, then why did APCC present such a narrow view in the IDT Proceeding? This is especially curious since it was in its interest to present as broad a definition as possible if the definition is *really* supported by statute and precedent. What should be obvious to the Commission is that, if and when it serves its particular purpose, APCC will expand and modify the accepted definition of “completed call”; so long as it can craft a definition that mandates compensation and sell it as though it was already on the shelves, that has been and continues to be APCC’s *modus operandi*.

While the Call Distribution System (“IVR”) described in Locus’ Petition might be considered a “platform” from a purely technical standpoint, it is not the type of platform described by APCC. Moreover, Locus does not seek exemption from payphone compensation for the types of calls described by APCC. Rather, Locus’ IVR system (the one that is the subject of this

⁹ In the IDT Proceeding APCC stated:

To be clear, since compensation is required only when a call is completed to the called party, APCC agrees with IDT that no compensation is due where a caller calls a prepaid card platform number in order to make a call to a separate called party and hangs up before entering a pin. *See* Petition at 8-9. In such an instance, no call is or could be completed to a called third party, and the platform has not provided any information to the caller so the call is not considered completed at the platform.

APCC further agrees with IDT that if a PIN is entered, but no information is provided, and a caller does not complete the process of entering a called party number, then no compensation is due. *See id.* APCC agrees that this is true regardless of whether (1) the caller enters a called number but the called party does not answer or (2) the caller abandons the call before completing the process of entering a called number. IDT is certainly correct that callers might abandon calls for “various reasons, such as, confusion, distraction, indecision, etc.,” Petition at 6. No matter the reason, such abandoned calls where no information is provided by or at the platform are not answered by the called party, and thus are not completed within the meaning of Section 276.” *Id.*

proceeding) merely provides the technological platform for the proper routing and transfer of the call to the called party – the customer service department. If the customer service representative (“CSR”) answers the phone, the call is completed and compensable, provided, that is, that the Commission determines customer service calls to be compensable under the Tollgate Rules. Calls that do not reach a CSR are not completed. Calls do not always reach the intended party, even when using IVRs. This happens for many reasons, for example, because the caller: (i) dialed the Toll-Free Customer Service number by accident, then hung up, (ii) pressed the incorrect internal routing number and hung up, (iii) asked for Spanish, but received English and hung up, (iv) became frustrated with the multiple internal prompts and hung up, (v) or simply hung up before reaching a CSR, their intended called party. Only Locus knows what happens to a call that reaches its IVR. Thus, the fact Verizon directs the customer service call to Locus’ T-1, which then routes the calls to the IVR, does not mandate compensation *unless* the customer service representative *answers* the call. This result was expressly acknowledged by APCC in the ITD Proceeding.¹⁰

4. Commenters fail to undercut Locus’ Petition.

The fact there is not an explicit compensation “exemption” for customer service calls within the text of the Tollgate Rules or related statutes is irrelevant. Locus’ Petition presents a unique scenario and one of first impression for the Commission. Therefore, it is no surprise there is no

¹⁰ *Implementation of the Pay Telephone Redclassification and Compensation Provisions of the Telecommunications Act of 1996*, Third Order on Reconsideration, 16 FCC Rcd 20922 (2001), in that order, the Commission addressed petitions for reconsideration from AT&T and MCI seeking a ruling that all calls handed off by an underlying facilities-based IXC to an SBR’s switch could be considered completed by the underlying facilities-based IXC. (At the time, the Commission’s required the first facilities-based IXC to pay compensation for calls handed off to SBRs.) The Commission disagreed, saying that underlying facilities-based IXCs can only treat as completed calls directed to a SBR’s switch and *then answered by the called party*. The Commission reasoned, correctly, only calls answered by the called party are “completed” as the Commission has interpreted the statute.” APCC Comments at p. 7 (emphasis added).

explicit exemption on the books; the absence of such has no bearing on the outcome of this Petition.

Finally, APCC's circular reasoning that compensation for the toll-free customer service calls is consistent with state laws is unintelligible and again fails to acknowledge the unique situation at hand.¹¹ Namely, that prepaid providers, as federal and state regulated entities, are prohibited from passing on the costs to its customers and are prohibited from blocking payphone originated calls, period. Consequently, prepaid providers are not, as APCC tries to characterize, "in the same position" as other companies that utilize 800 numbers.

5. If customer service calls are compensable, APCC is not entitled to 100% compensation according to Verizon's intermediate carrier reports.

If the Commission does in fact determine that Locus is the carrier that owes compensation, then its compensation should be based on Locus' determination of a completed call. Simply because a call reaches an IVR system, does not mean each and every call is "completed." Rather, it is up to Locus, then, to identify completed calls and pay compensation to APCC. APCC cannot demand payment for 100% of the calls that Verizon drops off at Locus' T-1 board. To do so would result in an unjustified windfall for APCC, something the Commission never intended when promulgating its Tollgate Rules.

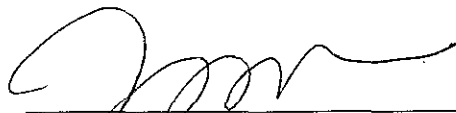
¹¹ APCC seems to argue that so long as the PSPs are compensated, the Commission does not care how the SBR/completing carrier passes-on the charge to the end user, it can do it per call or in "a different manner". See APCC Comments at pp. 4-5. Clearly, on a "per call" basis would violate state laws. So, APCC would have prepaid providers utilize a "different" way to charge the customer to get around those bothersome state laws that prohibit passing-on the toll-free customer service charges. APCC just doesn't get it. No matter what you call the compensation recovery scheme, be it a "fee" or a "surcharge" it is prohibited by state law. See e.g. California Rules Governing Consumer Protection, Rule 4(f)(5) ("A carrier shall not impose a fee or surcharge related to obtaining Customer Service including any charge related to connecting with the Customer number...") (emphasis added). APCC's tortured interpretation of the Commission's direction for recovery of compensation payment can not be accepted.

CONCLUSION

By focusing on the unique situation before the Commission it should be crystal clear that toll-free calls to a prepaid calling card provider's Customer Service department is a situation that was not contemplated by the Commission and not addressed in its Tollgate rules.

The compensation scheme devised by the Commission does not and should not require compensation, for to do so is contrary to the plain language of the Commission's rules, would create conflicts with state consumer protection laws, and is otherwise contrary to the public interest and good. However, if the Commission is inclined to require compensation for such payphone-originated customer service calls, it must carve out a "fair" solution for both the PSPs and the prepaid provider, one that is consistent with the various state laws and public policy surrounding customer service calls. Such a compensation plan is readily attainable with the adoption of Locus' proposed prospective approach, which is: only those customer service calls which are answered by a customer service representative are compensable and such compensation shall be at a reduced default rate due to public interest and carrier burden considerations.

Respectfully submitted,



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